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6 BIO-ENGINEERED SUPPLEMENTS
AND NUTRITION, INC.

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CENTRAL DIST. OF CALIF.
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FILED

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 THERMOLIFE INTERNATIONAL,
11 LLC

12 Plaintiff,

13 v.

14 BETTER BODY SPORTS, LLC, et al.

15 Defendant.

CASE NO. CV12-09229 GAF (FFMx)

Hon. Gary A. Feess
Courtroom 740

**DEFENDANT BIO-ENGINEERED
SUPPLEMENTS AND NUTRITION,
INC.'S ANSWER TO PLAINTIFF'S
COMPLAINT, COUNTERCLAIMS
AND DEMAND FOR JURY TRIAL**

Action Filed: October 26, 2012
Trial Date: None set

17 BIO-ENGINEERED SUPPLEMENTS
18 AND NUTRITION, INC.,

19 Counterclaimant,

20 v.

21 THERMOLIFE INTERNATIONAL,
22 LLC,

23 Counterdefendant.

1 Now comes the Defendant and Counterclaimant, Bio-Engineered
2 Supplements and Nutrition, Inc. ("BSN"), and for its answer, affirmative defenses
3 and counterclaims, alleges as follows:

4 **I. THE PARTIES**

5 1. BSN is without information sufficient to form a belief as to the truth
6 of the allegations in paragraph one of the Plaintiff's Complaint and therefore
7 denies them.

8 2. BSN is without information sufficient to form a belief as to the truth
9 of the allegations in paragraph two of the Plaintiff's Complaint and therefore
10 denies them.

11 3. BSN is without information sufficient to form a belief as to the truth
12 of the allegations in paragraph three of the Plaintiff's Complaint and therefore
13 denies them.

14 4. Admitted.

15 5. BSN is without information sufficient to form a belief as to the truth
16 of the allegations in paragraph five of the Plaintiff's Complaint and therefore
17 denies them.

18 6. BSN is without information sufficient to form a belief as to the truth
19 of the allegations in paragraph six of the Plaintiff's Complaint and therefore denies
20 them.

21 7. BSN is without information sufficient to form a belief as to the truth
22 of the allegations in paragraph seven of the Plaintiff's Complaint and therefore
23 denies them.

24 8. BSN is without information sufficient to form a belief as to the truth
25 of the allegations in paragraph eight of the Plaintiff's Complaint and therefore
26 denies them.

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1 9. BSN is without information sufficient to form a belief as to the truth
2 of the allegations in paragraph nine of the Plaintiff's Complaint and therefore
3 denies them.

4 10. BSN is without information sufficient to form a belief as to the truth
5 of the allegations in paragraph ten of the Plaintiff's Complaint and therefore denies
6 them.

7 11. BSN is without information sufficient to form a belief as to the truth
8 of the allegations in paragraph eleven of the Plaintiff's Complaint and therefore
9 denies them.

10 12. BSN is without information sufficient to form a belief as to the truth
11 of the allegations in paragraph twelve of the Plaintiff's Complaint and therefore
12 denies them.

13 13. BSN is without information sufficient to form a belief as to the truth
14 of the allegations in paragraph thirteen of the Plaintiff's Complaint and therefore
15 denies them.

16 14. BSN is without information sufficient to form a belief as to the truth
17 of the allegations in paragraph fourteen of the Plaintiff's Complaint and therefore
18 denies them.

19 15. BSN is without information sufficient to form a belief as to the truth
20 of the allegations in paragraph fifteen of the Plaintiff's Complaint and therefore
21 denies them.

22 16. BSN is without information sufficient to form a belief as to the truth
23 of the allegations in paragraph sixteen of the Plaintiff's Complaint and therefore
24 denies them.

25 17. BSN is without information sufficient to form a belief as to the truth
26 of the allegations in paragraph seventeen of the Plaintiff's Complaint and therefore
27 denies them.

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1 18. BSN is without information sufficient to form a belief as to the truth
2 of the allegations in paragraph eighteen of the Plaintiff's Complaint and therefore
3 denies them.

4 19. BSN is without information sufficient to form a belief as to the truth
5 of the allegations in paragraph nineteen of the Plaintiff's Complaint and therefore
6 denies them.

7 20. BSN is without information sufficient to form a belief as to the truth
8 of the allegations in paragraph twenty of the Plaintiff's Complaint and therefore
9 denies them.

10 21. BSN is without information sufficient to form a belief as to the truth
11 of the allegations in paragraph twenty-one of the Plaintiff's Complaint and
12 therefore denies them.

13 II. JURISDICTION AND VENUE

14 22. Admitted in part. BSN admits the complaint alleges an action for
15 patent infringement under Title 35 of the United States Code. BSN is without
16 information sufficient to form a belief as to the truth of the remaining allegations in
17 paragraph twenty-two of the Plaintiff's Complaint and therefore denies them.

18 23. Denied.

19 24. BSN is without information sufficient to form a belief as to the truth
20 of the allegations set forth in paragraph twenty-four of the Plaintiff's Complaint
21 and therefore denies them.

22 25. BSN is without information sufficient to form a belief as to the truth
23 of the allegations in paragraph twenty-five of the Plaintiff's Complaint and
24 therefore denies them.

III. THE DEFENDANTS' INFRINGING PRODUCTS

A. FACTS COMMON TO ALL INFRINGING PRODUCTS AND EACH DEFENDANT

26. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph twenty-six of the Plaintiff's Complaint and therefore denies them.

27. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph twenty-seven of the Plaintiff's Complaint and therefore denies them.

28. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph twenty-eight of the Plaintiff's Complaint and therefore denies them.

29. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph twenty-nine of the Plaintiff's Complaint and therefore denies them.

30. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph thirty of the Plaintiff's Complaint and therefore denies them.

31. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph thirty-one of the Plaintiff's Complaint and therefore denies them.

32. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph thirty-two of the Plaintiff's Complaint and therefore denies them.

33. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph thirty-three of the Plaintiff's Complaint and therefore denies them.

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34. BSN is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph thirty-four of the Plaintiff's Complaint and therefore denies them.

35. Denied.

36. BSN admits that Lone Star distributes and sells its products. BSN is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph thirty-six of the Plaintiff's Complaint and therefore denies them.

37. BSN admits that All Star distributes and sells its products. BSN is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph thirty-seven of the Plaintiff's Complaint and therefore denies them.

38. Denied.

B. PRODUCT-SPECIFIC DETAILS

"D-Aspartic Acid" (Defendant Better Body Sports' Product)

39. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph thirty-nine of the Plaintiff's Complaint and therefore denies them.

40. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph forty of the Plaintiff's Complaint and therefore denies them.

"Hyper FX" (One of Defendant BSN's Products)

41. Admitted.

42. Admitted that Lone Star is a distributor of BSN's products, including Hyper FX, but except as so admitted is without information sufficient to form a belief as to the truth of the allegations in paragraph forty two of the Plaintiff's Complaint and therefore denies them.

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43. Admitted that All Star is a retailer of BSN's products, including Hyper FX, but except as so admitted is without information sufficient to form a belief as to the truth of the allegations in paragraph forty three of the Plaintiff's Complaint and therefore denies them.

44. Admitted that that labels and advertisements for Hyper FX are in writing and speak for themselves, but except as so admitted BSN denies the allegations in paragraph forty-four of the Plaintiff's Complaint.

"Evotest" (Defendant BSN's Product)

45. Admitted.

46. Admitted that Lone Star is a distributor of BSN's products, including Evotest, but except as so admitted is without information sufficient to form a belief as to the truth of the allegations in paragraph forty six of the Plaintiff's Complaint and therefore denies them.

47. Admitted that All Star is a retailer of BSN's products, including Evotest, but except as so admitted is without information sufficient to form a belief as to the truth of the allegations in paragraph forty seven of the Plaintiff's Complaint and therefore denies them.

48. Admitted that that labels and advertisements for Evotest are in writing and speak for themselves, but except as so admitted BSN denies the allegations in paragraph forty-eight of the Plaintiff's Complaint.

"D-Aspartic Acid" (Defendant Allmax's Product)

49. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph forty-nine of the Plaintiff's Complaint and therefore denies them.

50. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph fifty of the Plaintiff's Complaint and therefore denies them.

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1 51. BSN is without information sufficient to form a belief as to the truth
2 of the allegations in paragraph fifty-one of the Plaintiff's Complaint and therefore
3 denies them.

4 **"DAA Pure" (Defendant Performance Edge's Product)**

5 52. BSN is without information sufficient to form a belief as to the truth
6 of the allegations in paragraph fifty-two of the Plaintiff's Complaint and therefore
7 denies them.

8 53. BSN is without information sufficient to form a belief as to the truth
9 of the allegations in paragraph fifty-three of the Plaintiff's Complaint and therefore
10 denies them.

11 **"Propadrol" (Defendant EST Nutrition's Product)**

12 54. BSN is without information sufficient to form a belief as to the truth
13 of the allegations in paragraph fifty-four of the Plaintiff's Complaint and therefore
14 denies them.

15 55. BSN is without information sufficient to form a belief as to the truth
16 of the allegations in paragraph fifty-five of the Plaintiff's Complaint and therefore
17 denies them.

18 56. BSN is without information sufficient to form a belief as to the truth
19 of the allegations in paragraph fifty-six of the Plaintiff's Complaint and therefore
20 denies them.

21 **"Bullasterone" (Defendant Hi-Tech's Product)**

22 57. BSN is without information sufficient to form a belief as to the truth
23 of the allegations in paragraph fifty-seven of the Plaintiff's Complaint and
24 therefore denies them.

25 58. BSN is without information sufficient to form a belief as to the truth
26 of the allegations in paragraph fifty-eight of the Plaintiff's Complaint and therefore
27 denies them.

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59. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph fifty-nine of the Plaintiff's Complaint and therefore denies them.

60. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty of the Plaintiff's Complaint and therefore denies them.

61. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty-one of the Plaintiff's Complaint and therefore denies them.

"Dagger" (Defendant Infinite Labs' Product)

62. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty-two of the Plaintiff's Complaint and therefore denies them.

63. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty-three of the Plaintiff's Complaint and therefore denies them.

64. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty-four of the Plaintiff's Complaint and therefore denies them.

"Intratest Xtreme" (Defendant Lecheek's First Product)

65. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty-five of the Plaintiff's Complaint and therefore denies them.

66. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty-six of the Plaintiff's Complaint and therefore denies them.

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67. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty-seven of the Plaintiff's Complaint and therefore denies them.

"Speed X3" (Defendant Lecheek's Second Product)

68. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty-eight of the Plaintiff's Complaint and therefore denies them.

69. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph sixty-nine of the Plaintiff's Complaint and therefore denies them.

70. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy of the Plaintiff's Complaint and therefore denies them.

"Testrodol X9" (Defendant Lecheek's Third Product)

71. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy-one of the Plaintiff's Complaint and therefore denies them.

72. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy-two of the Plaintiff's Complaint and therefore denies them.

73. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy-three of the Plaintiff's Complaint and therefore denies them.

"X-Fit Power" (Defendant MHP's Product)

74. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy-four of the Plaintiff's Complaint and therefore denies them.

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75. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy-five of the Plaintiff's Complaint and therefore denies them.

76. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy-six of the Plaintiff's Complaint and therefore denies them.

77. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy-seven of the Plaintiff's Complaint and therefore denies them.

"NMDA" (Defendant Muscle Warfare's Product)

78. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy-eight of the Plaintiff's Complaint and therefore denies them.

79. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph seventy-nine of the Plaintiff's Complaint and therefore denies them.

"MOAB" (Defendant Muscle Warfare's Product)

80. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty of the Plaintiff's Complaint and therefore denies them.

81. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty-one of the Plaintiff's Complaint and therefore denies them.

"Nuke" (Defendant Muscle Warfare's Product)

82. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty-two of the Plaintiff's Complaint and therefore denies them.

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83. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty-three of the Plaintiff's Complaint and therefore denies them.

"Napalm" (Defendant Muscle Warfare's Product)

84. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty-four of the Plaintiff's Complaint and therefore denies them.

85. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty-five of the Plaintiff's Complaint and therefore denies them.

"T-Up" (Defendant Nutrex's Product)

86. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty-six of the Plaintiff's Complaint and therefore denies them.

87. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty-seven of the Plaintiff's Complaint and therefore denies them.

88. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty-eight of the Plaintiff's Complaint and therefore denies them.

89. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph eighty-nine of the Plaintiff's Complaint and therefore denies them.

"Anabolic Freak" (Defendant PharmaFreak Product)

90. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety of the Plaintiff's Complaint and therefore denies them.

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91. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety-one of the Plaintiff's Complaint and therefore denies them.

"D-pol" (Defendant Purus' Product)

92. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety-two of the Plaintiff's Complaint and therefore denies them.

93. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety-three of the Plaintiff's Complaint and therefore denies them.

94. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety-four of the Plaintiff's Complaint and therefore denies them.

95. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety-five of the Plaintiff's Complaint and therefore denies them.

"Warrior" (Defendant Reaction's Product)

96. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety-six of the Plaintiff's Complaint and therefore denies them.

97. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety-seven of the Plaintiff's Complaint and therefore denies them.

98. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety-eight of the Plaintiff's Complaint and therefore denies them.

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“Vitality DM” (Defendant Reaction’s Product)

99. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph ninety-nine of the Plaintiff’s Complaint and therefore denies them.

100. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph one hundred of the Plaintiff’s Complaint and therefore denies them.

101. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph one hundred and one of the Plaintiff’s Complaint and therefore denies them.

“Pure Test” (Defendant Finaflex’s Product)

102. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph one hundred and two of the Plaintiff’s Complaint and therefore denies them.

103. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph one hundred and three of the Plaintiff’s Complaint and therefore denies them.

104. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph one hundred and four of the Plaintiff’s Complaint and therefore denies them.

105. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph one hundred and five of the Plaintiff’s Complaint and therefore denies them.

“Revolution PCT” (Defendant Finaflex’s Product)

106. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph one hundred and six of the Plaintiff’s Complaint and therefore denies them.

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1 107. BSN is without information sufficient to form a belief as to the truth
2 of the allegations in paragraph one hundred and seven of the Plaintiff's Complaint
3 and therefore denies them.

4 108. BSN is without information sufficient to form a belief as to the truth
5 of the allegations in paragraph one hundred and eight of the Plaintiff's Complaint
6 and therefore denies them.

7 109. BSN is without information sufficient to form a belief as to the truth
8 of the allegations in paragraph one hundred and nine of the Plaintiff's Complaint
9 and therefore denies them.

10 **"Ignite 2" (Defendant Finaflex's Product)**

11 110. BSN is without information sufficient to form a belief as to the truth
12 of the allegations in paragraph one hundred and ten of the Plaintiff's Complaint
13 and therefore denies them.

14 111. BSN is without information sufficient to form a belief as to the truth
15 of the allegations in paragraph one hundred and eleven of the Plaintiff's Complaint
16 and therefore denies them.

17 112. BSN is without information sufficient to form a belief as to the truth
18 of the allegations in paragraph one hundred and twelve of the Plaintiff's Complaint
19 and therefore denies them.

20 113. BSN is without information sufficient to form a belief as to the truth
21 of the allegations in paragraph one hundred and thirteen of the Plaintiff's
22 Complaint and therefore denies them.

23 **"V30+" (Defendant SNI's Product)**

24 114. BSN is without information sufficient to form a belief as to the truth
25 of the allegations in paragraph one hundred and fourteen of the Plaintiff's
26 Complaint and therefore denies them.

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115. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph one hundred and fifteen of the Plaintiff's Complaint and therefore denies them.

"D-Aspartic Acid" (Defendant Ethitech's Product)

116. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph one hundred and sixteen of the Plaintiff's Complaint and therefore denies them.

117. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph one hundred and seventeen of the Plaintiff's Complaint and therefore denies them.

IV. THE DEFENDANTS' INFRINGEMENTS

118. Denied.

A. DIRECT INFRINGEMENTS

119. Denied.

120. Denied.

121. Denied.

B. INDIRECT INFRINGEMENTS

122. Denied.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

128. Denied.

129. Denied.

130. Denied.

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131. BSN admits that Plaintiff sent communications to BSN between June 2012 and October 2012 to notify them of the patent and their alleged infringements. BSN is without information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph one hundred and thirty-one of the Plaintiff's Complaint, and therefore denies them.

132. BSN is without information sufficient to form a belief as to the truth of the allegations in paragraph one hundred and thirty-two of the Plaintiff's Complaint and therefore denies them.

133. Denied.

134. Denied.

135. Denied.

136. Denied.

137. Denied.

138. Denied.

139. Denied.

V. FIRST CAUSE OF ACTION

Infringement of U.S. Patent No. 8,202,908

140. BSN repeats and re-alleges its responses to the allegations of the foregoing paragraphs of this Complaint as if fully set forth herein.

141. Denied.

142. Denied.

143. Denied.

144. Denied.

145. Denied.

146. Denied.

147. Denied.

148. Denied.

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1 149. Denied.

2 150. Denied.

3 151. Denied.

4 152. Denied.

5 153. Denied.

6 154. Denied.

7 155. Denied.

8 156. Denied.

9 157. Denied.

10 158. Denied.

11 159. Denied.

12 **AFFIRMATIVE DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE**

14 Plaintiff's Complaint fails to state a claim upon which relief may be granted.

15 **SECOND AFFIRMATIVE DEFENSE**

16 BSN has not engaged in any acts that would constitute infringement of any
17 valid and enforceable patent in suit.

18 **THIRD AFFIRMATIVE DEFENSE**

19 The patent-in-suit is invalid for failure to comply with the statutory
20 provisions for patentability and validity set forth Title 35 of the United States
21 Code, including one or more of 35 U.S.C. §§ 101, 102, 103, 112, 115, 116 and
22 256, for the following reasons:

23 a. The alleged invention was known or used by others in this
24 country, or patented or described in a printed publication in this or a foreign
25 country, more than one year prior to the date of the application for a patent in the
26 United States.

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1 b. The alleged invention was known or used by others in this
2 country, or patented or described in a printed publication in this or a foreign
3 country or in public use or on sale in this country, more than one year prior to the
4 date of the application for patent in the United States.

5 c. The alleged invention was described in a patent granted on an
6 application for a patent by another filed in the United States before the invention
7 thereof by the alleged patentees, or on an international application by another
8 which complied with the requisite statutes.

9 d. The patentees did not themselves invent the subject matter
10 sought to be patented.

11 e. Before the alleged invention by the patentees the alleged
12 invention was made in this country by another who had not abandoned, suppressed
13 or concealed it.

14 f. The alleged invention was obvious at the time of the invention
15 to a person having ordinary skill in the art.

16 g. The specifications of the patent does not comply with the
17 requirements set forth in 35 U.S.C. §112, including but not limited to the best
18 mode requirement and enablement requirement.

19 h. The patent does not particularly point out and distinctly claim
20 the invention.

21 i. One or more of the correct inventors were not named on the
22 asserted patent.

23 j. The inventor committed inequitable conduct before the United
24 States Patent and Trademark Office during the prosecution of the '908 patent, as
25 specified in greater detail below.
26
27
28

1 **FOURTH AFFIRMATIVE DEFENSE**

2 Plaintiff is estopped from asserting a scope for the claims of the asserted
3 patent-in-suit that would cover any product made, used, sold and/or offered for sale
4 by BSN by representations, arguments, and/or amendments made during
5 prosecution of the asserted patent before the PTO.

6 **FIFTH AFFIRMATIVE DEFENSE**

7 Plaintiff is not entitled to any relief or recovery by reason of its coming into
8 this Court with unclean hands in seeking to enforce patent that Plaintiff knew on
9 information and belief to be invalid, unenforceable, and/or not infringed.

10 **SIXTH AFFIRMATIVE DEFENSE**

11 Plaintiff is not entitled to any equitable relief or recovery because it has a
12 full, complete and adequate remedy at law.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 Plaintiff is not entitled to any equitable relief or recovery because it has unclean
15 hands.

16 **COUNTERCLAIMS**

17 Pursuant to Federal Rule of Civil Procedure 13, BSN's Counterclaims
18 against Plaintiff are as follows:

19 **THE PARTIES**

20 1. The Plaintiff/Defendant-in-Counterclaim allegedly is a limited
21 liability company organized and existing under the laws of Arizona, with a place of
22 business at 1811 Ocean Front Walk in Venice, California, 90291.

23 2. The co-Defendant/Plaintiff-in-Counterclaim, Bio-Engineered
24 Supplements and Nutrition, Inc. ("BSN") is a company organized and existing
25 under the laws of New Jersey with a principal place of business at Florida with its
26 principal place of business at 5901 Broken Sound Parkway, in Boca Raton,
27 Florida, 33478-2773.

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1 3. Defendant Better Body Sports, LLC is a named Defendant in this
2 litigation.

3 4. Defendant Bio-Engineered Supplements and Nutrition, Inc. is a
4 named Defendant in this litigation.

5 5. Defendant Allmax Nutrition Inc. is a named Defendant in this
6 litigation.

7 6. Defendant Bronson Laboratories, Inc. d/b/a Performance is a named
8 Defendant in this litigation.

9 7. Defendant Engineered Sports Technology, LLC d/b/a EST Nutrition
10 is a named Defendant in this litigation.

11 8. Defendant Hi-Tech Pharmaceuticals, Inc. d/b/a Hi-Tech is a named
12 Defendant in this litigation.

13 9. Defendant Infinite Labs, LLC is a named Defendant in this litigation.

14 10. Defendant Lecheek, LLC is a named Defendant in this litigation.

15 11. Defendant Purus Labs, Inc. is a named Defendant in this litigation.

16 12. Defendant Muscle Warfare, Inc. is a named Defendant in this
17 litigation.

18 13. Defendant Nutrex Research, Inc. is a named Defendant in this
19 litigation.

20 14. Defendant PharmaFreak Holdings, Inc. is a named Defendant in this
21 litigation.

22 15. Defendant Lone Star Distribution is a named Defendant in this
23 litigation.

24 16. Defendant Reaction Nutrition, LLC is a named Defendant in this
25 litigation.

26 17. Defendant Redefine Nutrition, LLC d/b/a Finaflex is a named
27 Defendant in this litigation.

1 18. Defendant SNI, LLC is a named Defendant in this litigation.

2 19. Defendant Tiger Fitness, Inc. d/b/a Ethitech is a named Defendant in
3 this litigation.

4 20. Defendant All Star Health is a named Defendant in this litigation.

5 **JURISDICTION AND VENUE**

6 21. This counterclaim is brought pursuant to the Federal Declaratory
7 Judgment Act, 28 U.S.C. §2201, et seq. The Complaint in this action alleges that
8 BSN has infringed the patent-in-suit and gives rise to an actual case or controversy
9 under 28 U.S.C. §§ 2201 and 2202.

10 22. This counterclaim arises under the patent laws of the United States, 35
11 U.S.C. § 1, et seq.

12 23. This Court has subject matter jurisdiction over this counterclaim
13 pursuant to 28 U.S.C. §§ 1338, 2201, and 2202.

14 24. This Court has subject matter jurisdiction over this counterclaim
15 pursuant to 28 U.S.C. §§ 1338, 2201, and 2202.

16 25. Venue for this Counterclaim in this District is proper under 28 U.S.C.
17 §§ 1391 as this Counterclaim arises from the Complaint. BSN reserves the right to
18 contest venue of the underlying action.

19 26. BSN is entitled to declaratory relief because, although BSN has not
20 infringed and is not infringing the patent-in-suit, BSN will use accused apparatus
21 and methods as claimed in the patent- in-suit after the patent-in-suit are declared
22 not infringed, invalid, and/or unenforceable

23 **FACTUAL BACKGROUND**

24 27. On or about June 29, 2012, the United States Patent and Trademark
25 Office issued U.S. Patent No. 8,202,908 ("the '908 patent") entitled "D-Aspartic
26 Acid Supplement," indicating the inventor as Patrick Arnold and being assigned to
27 Thermolife International, LLC. The Plaintiff asserts the named Defendants
28

1 allegedly committed the tort of patent infringement within the State of California,
 2 and allegedly infringed the '908 patent by either shipping, selling, distributing,
 3 offering for sale, advertising, or continued to ship, distribute, offer for sale and
 4 advertise the accused products listed in Plaintiff's Complaint in this judicial
 5 district.

6 COUNT I

7 **(DECLARATORY JUDGMENT OF NON-INFRINGEMENT)**

8 28. BSN repeats and realleges Paragraphs 1 through 27 above, as though
 9 fully set forth herein.

10 29. BSN has not directly infringed and does not directly infringe any or
 11 all of the claims of the patent in suit under 35 U.S.C. § 271 (a).

12 30. BSN has not actively induced and does not actively induce
 13 infringement of any or all of claims of the patent in suit under 35 U.S.C. § 271 (b).

14 31. BSN has not contributed to and does not contribute to infringement of
 15 any or all of the claims of the patent in suit under 35 U.S.C. § 271 (c).

16 32. BSN is therefore entitled to a declaratory judgment that BSN does not
 17 directly or indirectly infringe any or all of the claims of the patent-in-suit and to
 18 such further injunctive relief as may be just and proper.

19 COUNT II

20 **(DECLARATORY JUDGMENT OF PATENT INVALIDITY)**

21 33. BSN incorporates the allegations set forth in paragraphs 1 through 32
 22 above by reference as if fully set forth herein.

23 34. The patent-in-suit are invalid for failure to comply with the statutory
 24 provisions for patentability and validity set forth Title 35 of the United States
 25 Code, including one or more of 35 U.S.C. §§ 101, 102, 103, 112, 115, 116 and
 26 256, for the following reasons:
 27
 28

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1 a. The alleged invention was known or used by others in this
2 country, or patented or described in a printed publication in this or a foreign
3 country, more than one year prior to the date of the application for a patent in the
4 United States.

5 b. The alleged invention was known or used by others in this
6 country, or patented or described in a printed publication in this or a foreign
7 country or in public use or on sale in this country, more than one year prior to the
8 date of the application for patent in the United States.

9 c. The alleged invention was described in a patent granted on an
10 application for a patent by another filed in the United States before the invention
11 thereof by the alleged patentees, or on an international application by another
12 which complied with the requisite statutes.

13 d. The patentees did not themselves invent the subject matter
14 sought to be patented.

15 e. Before the alleged invention by the patentees the alleged
16 invention was made in this country by another who had not abandoned, suppressed
17 or concealed it.

18 f. The alleged invention was obvious at the time of the invention
19 to a person having ordinary skill in the art.

20 g. The specifications of the patent does not comply with the
21 requirements set forth in 35 U.S.C. §112, including but not limited to the best
22 mode requirement and enablement requirement.

23 h. The patent does not particularly point out and distinctly claim
24 the invention.

25 i. One or more of the correct inventors were not named on the
26 asserted patent.

27

28

COUNT III
(INEQUITABLE CONDUCT)

44. In his patent application, no. 12/383682, Mr. Arnold represented to the Patent Office, *inter alia*, that:

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No studies have examined the effects of D-aspartic acid or N-methyl-D-aspartate on male humans. It is well known that different species of mammals often have different responses to hormones. Therefore, it is unknown whether, and to what degree, the administration of D-aspartic acid compounds in different ways and at different levels to male humans causes an increase in levels of testosterone, growth hormone, and insulin-like growth factor 1.

Accordingly, there is a demand for a method of improving the physical condition of adult male humans of all ages by increasing their levels of testosterone, growth hormone, and insulin-like growth factor 1 without the administration of hormones or prohormones.

45. In his patent application, no. 12/383682, Mr. Arnold represented to the Patent Office, *inter alia*, that:

One general object of this invention is to provide an improved method of enhancing the physical condition of adult male humans of all ages by increasing their levels of testosterone, growth hormone, and/or insulin-like growth factor 1 without the administration of hormones.

I have invented a method of improving the physical condition of an adult male human. The method comprises administering an effective amount of a D-aspartic acid compound to an adult male human.

The method of this invention improves the physical condition of adult male humans of all ages by increasing their levels of testosterone, growth hormone, and/or insulin-like growth factor 1 without the administration of hormones. The method comprises the administration of D-aspartic acid and/or its biological equivalent derivate compounds. D-aspartic acid is a chemical that is present in the human body and is generally recognized as safe.

46. In his patent application, no. 12/383682, Mr. Arnold represented to the Patent Office, *inter alia*, that:

1. The Invention In General

The method of the invention comprises the administration of an effective amount of a D-aspartic acid compound to adult human males. It has been surprisingly found that the administration causes an increase in the levels of

1 testosterone, growth hormone, and insulin-like growth factor 1. Increases in
2 these hormones cause, in turn, an improvement in the physical condition of
3 the males.

4 2. The D-Aspartic Acid Compound

5 Suitable D-aspartic acid compounds include D-aspartic acid, D-aspartate
6 salts, D-aspartate esters, and other functionally equivalent derivatives such
7 as N-methyl-D-aspartic acid. The D-aspartic acid compound is suitable in its
8 enantiomeric form or as the racemic mixture. The preferred compound is
9 DL-aspartic acid because of its ready availability and low cost.

10 3. Administration

11 The D-aspartic acid compound is administered in any known way that
12 results in the compound entering the bloodstream. For example, the
13 compound is orally ingested, injected directly into the bloodstream,
14 administered via patches, and the like. The preferred method of
15 administration is by oral ingestion. D-aspartic acid is well tolerated and is
16 effectively taken into the bloodstream through the digestive tract.

17 The D-aspartic acid compound is conveniently ingested as a powder or is
18 dissolved in a suitable liquid. For example, D-aspartic acid has substantial
19 solubility in water and is well suited for addition to conventional aqueous
20 beverages. The D-aspartic acid may have synergistic results with other
21 common nutritional supplements, such as androst-4-ene-3,6,17-trione,
22 marketed as 6-OXO supplement by Proviant Technologies, Inc. of
23 Champaign, Ill.

24 4. Effective Amount

25 The D-aspartic acid compound is administered in an amount that is effective
26 to increase the levels of testosterone, growth hormone, and/or insulin-like
27 growth factor 1 in the recipient. In general, the D-aspartic acid compound is
28 administered in an amount of about 1 to 100 grams per day, preferably about
1 to 20 grams per day, and most preferably about 5 to 10 grams per day,
computed on the basis of equivalent molar amount of D-aspartic acid. In
other words, if the DL-aspartic acid racemic modification is used, the
amounts are doubled. If a derivative is used having a molecular weight ten
percent greater than that of D-aspartic acid, the amounts are increased by ten
percent to provide the same equivalent molar amount.

5. Benefits

1 The administration of an effective amount of a D-aspartic acid compound
2 has many beneficial effects on adult male humans. The administration
3 causes an increase in the levels of testosterone, growth hormone, and/or
4 insulin-like growth factor 1 in the recipient, regardless of age. The increases
5 in these hormones, in turn, are believed to cause a large number of
6 improvements in physical condition, including an increase in muscle mass,
an increase in strength, a decrease in fat, and a reduction in various aging
characteristics. Increases in these hormones are also believed to cause an
improvement in sexual performance.

7
8 47. The pending patent claims in the application, no. 12/383,682, were
9 originally stated as follows:

- 10 1. A method of improving the physical condition of an adult male
11 human, the method comprising administering an effective amount of a D-
12 aspartic acid compound to an adult male human.
- 13 2. The method of claim 1 wherein the D-aspartic acid compound is
14 administered by oral ingestion.
- 15 3. The method of claim 2 wherein the D-aspartic acid compound is
16 administered in an amount of about 1 to 20 grams of D-aspartic acid
equivalent.
- 17 4. The method of claim 3 wherein the D-aspartic acid compound is
18 administered as a racemic mixture.
- 19 5. The method of claim 1 wherein the D-aspartic acid compound
20 comprises D-aspartic acid.
- 21 6. The method of claim 1 wherein the D-aspartic acid compound
22 comprises N-methyl-D-aspartic acid.
- 23 7. The method of claim 1 wherein the D-aspartic acid compound
24 comprises a salt or an ester of D-aspartic acid.
- 25 8. A method of improving the physical condition of an adult male human
26 increasing his levels of testosterone, growth hormone, and/or insulin-like
27 growth factor 1, the method comprising administering an effective amount
28 of a D-aspartic acid compound to an adult male human.

48. On or about June 7, 2011, the Patent Office issued an Office Action
Summary, and rejected the pending claims. The examiner noted claims 1 – 8 were
rejected under 35 U.S.C. § 103(a) as being unpatentable over Estienne *et al.*, U.S.

Patent No. 5,691,377. The examiner rejected claims 1 – 8 under 35 U.S.C. § 103(a) as being unpatentable over Simone, U.S. Patent No. 5,397,786, in view of Pantaleone *et al.*, U.S. Patent No. 5,834,259, and further view of Estienne *et al.*, U.S. Patent No. 5,691,377 . The examiner rejected Claims 1-5, 7 and 8 under 35 U.S. C. 103(a) as being unpatentable over Estienne *et al.* (U.S. 5,691,377) in view of Pantaleone *et al.* (U.S. 5,834,259). The examiner also rejected claim 1 – 8 under 35 U.S. C. 103(a) as being unpatentable over D’Aniello (Applicant cited IDS: Brain Research Reviews, 2007, 53, 215 – 234).

49. On or about December 7, 2011, the inventor, through his counsel, filed a Response to Office Action Dated June 7, 2011. In the response, the inventor, through his counsel, represented that there was no teaching or suggestion from the prior art cited to increase testosterone levels in human males with the administration of D-aspartic acid. In particular, the inventor, stated, inter alia:

D’Aniello describes the effect of intravenous administration of D-aspartic acid in rats. This results in increase in LH and testosterone in rats. However, the Examiner makes two false assumptions here: 1) That intraperitoneal administration should have the same effect as oral administration; and 2) That if something is effective on rats it should have the same effect on humans.

For the first false assumption, a lot of drugs have no effect when administered orally due to low absorption/bioavailability, extensive metabolism, destruction in stomach acidic, p.h., inability to reach target tissues, inability to reach high enough blood concentrations, etc. Therefore, they exist only in injectable forms. Examples include Heparin, Adrenaline (an aminoacid metabolite), benzylpenicilline, etc. Thousands of examples can be found. The use of a compound parenterally does in no way make obvious its use for the same purpose orally nor does it make obvious the dosing scheme and regime to achieve results.

For the second false assumption, if we were to assume that rat studies had the same effect on humans, no human clinical trials would exist. Many,

1 many drugs and supplements despite showing promising results in rats show
2 disappointment or even opposite results in humans. . .

3 Thus, in no way does the effect of the compound on rats render
4 obvious it's therapeutic use in humans . . .

5
6 50. On or about December 7, 2011, the inventor, through his counsel,
7 filed a Response to Office Action Dated June 7, 2011. In the response, the
8 inventor, through his counsel, represented:

9 The applicant, prior to applying for the patent, conducted research to prove
10 D-aspartic acid does indeed increase testosterone levels in humans and
11 established a dosing regime. This by itself is true research and the patent
12 office should endorse it as it promotes invention. . .

13 The applicants findings are further confirmed by the following study, which
14 further proved the applicant did indeed spend time and money to research
15 the compound before applying [citing *The Role and Molecular mechanism*
16 *of D-aspartic Acid in the Release and Synthesis of L.H. and Testosterone in*
17 *Humans and Rats*, Enza Topo et al, Reproductive Biology Endocrinology,
18 2009; 7:120.]

19 51. On or about December 22, 2011, the inventor, through his counsel,
20 filed a Supplemental Response to Office Action Dated June 7, 2011. In the
21 response, the inventor, through his counsel, represented:

22 In addition to what was already submitted in the Response filed
23 December 7, 2011 (hereby incorporated by reference), Applicant notes the
24 following.

25 D'Aniello describes the effect of intravenous administration of D-
26 aspartic acid in rats. This results in increase in L.H and testosterone in rats.
27 However, the Examiner makes two false assumptions here: 1) That intra-
28 peritoneal administration should have the same effect as oral administration;
and 2) That if something is effective on rats it should have the same effect
on humans. . .

1 In addition as we previously stated, the researchers of the foregoing
 2 study themselves exclaimed at the beginning of the study in the background
 3 section that (emphasis added) [citing *The Role and Molecular mechanism of*
 4 *D-aspartic Acid in the Release and Synthesis of L.H. and Testosterone in*
 5 *Humans and Rats*, Enza Topo et al, Reproductive Biology Endocrinology,
 2009; 7:120]:

6 “Although numerous studies have been conducted on this
 7 matter, no investigations have been until now on the effects of D-Asp
 8 on the secretion of LH and testosterone in humans, and neither has the
 9 molecular mechanism by which D-Asp triggers it action in the
 synthesis and release of hormones investigated”

10 By their very own words the effects of DAA at the time of the study
 11 (almost two years after the priority date of the present patent application) on
 LH and testosterone secretion in HUMANS remained unknown.

12 52. On or about January 12, 2012, the Patent Office issued a final
 13 rejection in an Office Action mailed on January 17, 2012. The examiner noted
 14 claims 1 – 5, 7, 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable
 15 over Estienne *et al.*, U.S. Patent No. 5,691,377, in view of Pantaleone *et al.*, U.S.
 16 Patent No. 5,834,259.

17 The examiner rejected claims 1 – 5, 7, 8 under 35 U.S.C. § 103(a) as being
 18 unpatentable over Simone, U.S. Patent No. 5,397,786, in view of Pantaleone *et al.*,
 19 U.S. Patent No. 5,834,259. The examiner also rejected claim 1 – 5, 7, 8 under 35
 20 U.S. C. 103(a) as being unpatentable over D’Aniello (Applicant cited IDS: Brain
 21 Research Reviews, 2007, 53, 215 – 234).

22 53. On or about April 17, 2012, the inventor, through his counsel, filed an
 23 Amendment After Final Rejection, wherein he amended claim 1 and 3, and
 24 cancelled claims 2, and 5 – 8. Claim 1 was amended, *inter alia*, to include the
 25 Markush group “selected from the group consisting of D-aspartic acid, D-Aspartate
 26 salts, and D-aspartate esters” purportedly to distinguish the prior art.
 27

1 54. On or about April 17, 2012, the inventor, through his counsel, made
2 the following statements, *inter alia*, to the Patent Office:

3
4 This study/article is not prior art. Therefore, because it is peer reviewed,
5 scrutinized, etc. this article is strong evidence that the present invention is
6 not obvious, [citing *The Role and Molecular mechanism of D-aspartic Acid*
7 *in the Release and Synthesis of L.H. and Testosterone in Humans and Rats*,
8 Enza Topo et al, Reproductive Biology Endocrinology, 2009; 7:120] . . .

9 Thus, by their very own words the effects of DAA at the time of the study
10 (almost two years after the priority date of the patent application) on LH and
11 testosterone secretion on HUMANS remained unknown. . .

12 The examiner argues because NMDA is an analog compound of D-aspartic
13 Acid a person of ordinary skill in the art would be motivated use [sic] for the
14 same purposes. The examiner further argues (without evidence whatsoever
15 placed on the record) that they are the “same compound”, and that NMDA
16 (even though not taught in Estiene) would increase levels of testosterone,
17 growth hormone, and/or insulin-like growth factor 1 as Applicant claimed
18 for D-Aspartic acid in Claim 8. . .

19 Claim 1 has been amended. Among other things, claim 1 includes the
20 Markush group “ a D-aspartic acid, D-Aspartate salts, and D-aspartate
21 esters” . . .

22 Moreover the presumption of obvious based on a reference disclosing
23 structurally similar compounds may be over come where there is a showing
24 there is no reasonable expectation of similar properties in structurally similar
25 compounds . . . [emphasis in the original]

26 As evidence that there is no reasonable expectation of similar properties in
27 DAA as compared to NMDA . . .

28 55. On or about May 10, 2012, the Patent Office issued Notice of
Allowance. In the Notice, the examiner stated several “Reasons for Allowance,”
including, *inter alia*:

1 Applicant's arguments have been fully considered and found persuasive . . .

2 The closest prior art are Estienne (U.S. 5,591,377), Simone (US 5,397,786)
3 and D'Aniello (Applicant cited IDS: Brain Research Reviews, 2007, 53,
4 215-234) . . .

5 The prior art D'Aniello (Brain Research Reviews, 2007) does not describe
6 oral administration of D-Asp or do not teach administration of D-Asp to
7 humans. The effect of D-Asp at the time of the instant application was filed
8 on LH and testosterone secretion on humans remained unknown.

9 56. At all times relevant thereto, the arguments made to the Patent Office
10 during the prosecution of the '908 patent to overcome the various prior art
11 rejections were made to convince the Patent Office that the effect of D-aspartic at
12 the time of the patent application was filed on LH and testosterone secretion on
13 humans remained unknown.

14 57. At all times relevant hereto, the inventor, Patrick Arnold, frequently
15 commented on the internet concerning the topics of fitness and supplements,
16 including methods of increasing testosterone.

17 58. On or about October 10, 1996, in an on-line discussion concerning the
18 "Best Way to Legally Increase Testosterone?", the inventor Patrick Arnold
19 disclosed "D-aspartic acid (or N-methyl-D-aspartate." This statement was publicly
20 posted in a forum specifically addressing "good, safe and legal methods of
21 increasing testosterone" in human males.

22 59. At all times relevant hereto, the arguments made to the Patent Office
23 during the prosecution of the '908 patent to convince the Patent Office that the
24 effect of D-aspartic at the time of the patent application was filed on LH and
25 testosterone secretion on humans remained unknown were false and deceptive.

26 60. At all times relevant hereto, the statements made to the Patent Office
27 in the application(s) that matured into '908 patent that the effect of D-aspartic at
28

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1 the time of the patent application was filed on LH and testosterone secretion on
2 humans remained unknown were false and deceptive.

3 61. At all times relevant hereto, during the prosecution of the '908 patent,
4 the inventor, Patrick Arnold, withheld information material to the patentability
5 concerning the subject matter of the '908 patent, including but not limited to,
6 whether the effect of D-aspartic at the time of the patent application was filed on
7 LH and testosterone secretion on humans remained unknown.

8 62. The inventor, Patrick Arnold, publically disclosed in a printed media
9 on October 10, 1996, that D-aspartic acid and N-methyl-D-aspartate increases
10 testosterone, such statement was material to patentability, and Mr. Arnold failed to
11 report this public disclosure to the Patent Office, which was his duty under 37
12 C.F.R. § 1.56.

13 63. At all times relevant hereto, the above recited acts constituted fraud
14 and/or inequitable conduct in the proceedings before the Patent Office during the
15 prosecution of the '908 patent.

16 64. BSN is therefore entitled to judgment that the '908 patent is
17 unenforceable, a declaration that this case is exceptional in favor of MHP under 35
18 U.S.C. § 285 and that BSN be awarded its reasonable attorneys' fees and expenses.

19 20 **PRAYER FOR RELIEF**

21 WHEREFORE, BSN prays for the following relief:

22 A. That Judgment be entered in favor of BSN and against Plaintiff on
23 each and every count of the Complaint and on each and every count of its
24 Counterclaim;

25 B. That Judgment be entered declaring that neither BSN nor the BSN's
26 products have not infringed the '908 patent;
27
28

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1 C. That Judgment be entered declaring that Plaintiff is equitably
2 estopped from alleging infringement of the '908 patent;

3 D. That Judgment be entered declaring that Plaintiff is precluded from
4 obtaining injunctive relief, money damages, costs, and/or attorneys' fees for any
5 alleged infringement by BSN and/or BSN's products;

6 E. That Judgment be entered declaring the claims of the '908 patent
7 invalid;

8 F. That Judgment be entered permanently enjoining and restraining
9 Plaintiff, its officers, agents, servants, employees and attorneys, and all others
10 acting for, on behalf of, or in active concert or participation with any of them, from
11 stating, implying, or suggesting that infringes the patent-in-suit;

12 G. That Judgment be entered declaring that this case is exceptional in
13 favor of BSN under 35 U.S.C. § 285 and that BSN be awarded its reasonable
14 attorneys' fees and expenses;

15 H. That BSN be awarded its costs in this action; and

16 I. That BSN be awarded such other and further relief as the Court may
17 deem just and proper.

18 ///

19 ///

20 ///

DEMAND FOR JURY TRIAL

BSN demands a trial by jury of all issues so triable in this action.

Dated: January 3, 2013

VENABLE LLP

By: 
Daniel S. Silverman

Attorney for Defendant and
Counterclaimant
BIO-ENGINEERED
SUPPLEMENTS AND
NUTRITION, INC.

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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is Venable LLP, 2049 Century Park East, Suite 2100, Los Angeles, California.

On **January 8, 2013**, I served a copy ☒ / original ☐ of the foregoing document(s) described as **DEFENDANT BIO-ENGINEERED SUPPLEMENTS AND NUTRITION, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT, AFFIRMATIVE DEFENSES, COUNTERCLAIMS AND DEMAND FOR JURY TRIAL** on the interested parties in this action addressed as follows

SEE ATTACHED MAILING LIST

☒ By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.

☒ **BY MAIL (FRCP 5(b)(1)(C)):** I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice such envelope(s) is deposited with the U.S. postal service on the same day this declaration was executed, with postage thereon fully prepaid at 2049 Century Park East, Suite 2100, Los Angeles, California, in the ordinary course of business.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on January 8, 2013, at Los Angeles, California.


Jan Contreras

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